

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

Case No. 1990-1535-FC

AGUSTIN TODD PENA,

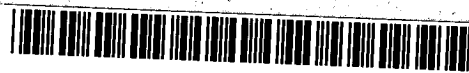
Defendant.

OPINION AND ORDER

Defendant has filed a motion for relief from judgment, a motion for summary disposition and a motion for personal recognizance bond.

Defendant was convicted, following a jury trial, of first degree murder, contrary to MCL 750.316, conspiracy to commit first degree murder, contrary to MCL 750.157a, and mutilation of a dead body, contrary to MCL 750.160. Defendant was sentenced to a term of mandatory life imprisonment without the possibility of parole for the offenses of murder and conspiracy, and 6 to 10 years imprisonment for the mutilation offense. Defendant's conviction was affirmed on appeal. Defendant now returns to this Court and seeks further review of his convictions.

The Court will first address defendant's motion for relief from judgment. This motion follows defendant's post-judgment appeals and is properly reviewed under MCR 6.501 *et seq.* The defendant has the burden of establishing entitlement to the relief requested. MCR 6.508(D). Relief may not be granted if the motion alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence, unless the defendant demonstrates good cause for failing to previously raise the issue and actual prejudice



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from the alleged irregularity. MCR 6.508(D)(3)(a)(b). However, if it plainly appears from the face of the materials presented that defendant is not entitled to relief, the court shall deny the motion without directing further proceedings. MCR 6.504(B)(2). One and only one motion for relief from judgment may be filed with regard to a conviction. MCR 6.502(G)(1).

The Court has carefully reviewed this motion. The Court notes the motion was filed quite some time ago but was never noticed for hearing before the Court. The Court also does not have a proof of service to show that defendant properly served the prosecuting attorney. Because defendant may only file one motion for relief from judgment, the Court will deny this motion at this time but will allow defendant to re-file the motion with the necessary documentation.

This brings the Court to defendant's motion for summary disposition under MCR 2.116(C)(4). In this motion, defendant contends this Court lacked subject matter jurisdiction based on what he perceives to have been errors in the process of initiating the case against him. According to defendant, the warrant was not supported by facts which would lead to a conclusion that there was probable cause to believe defendant committed the crimes charged. Defendant further asserts the felony complaint was not sworn to by the officer before a notary public and this perceived defect stripped both the district court and this Court of subject matter jurisdiction. As a result, defendant believes he is entitled to dismissal of the charges against him, as well as his convictions for those charges, and release from the custody of the Michigan Department of Corrections.

A motion for summary disposition which challenges the trial court's subject-matter jurisdiction is properly brought under MCR 2.116(C)(4). Subject-matter jurisdiction is the right of the court to exercise judicial power over a class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending. *Bowie v*

*Arder*, 441 Mich 23, 39; 490 NW2d 568 (1992). A court's subject-matter jurisdiction is determined by reference to the allegations in the complaint. *Neal v Oakwood Hospital Corp*, 226 Mich App 701, 707; 575 NW2d 68 (1997). Challenges to a court's subject-matter jurisdiction may be raised at any time. *Id.* If the allegations indicate that the matter is within the class of cases over which the court has power to act, then subject-matter jurisdiction exists. *Id.*, at 707-708.

This Court is satisfied it had subject matter jurisdiction over defendant's case. In *People v Farmilo*, 137 Mich App 378, 380; 358 NW2d 350 (1984), the Court stated:

Except in cases brought before the circuit court by indictment or appeal from a lower court, the jurisdiction of the circuit court in criminal cases is limited to the crime or crimes included in the return of the examining magistrate. The circuit court gains jurisdiction over a defendant charged with a criminal offense triable in circuit court upon the filing of a return by the examining magistrate showing that the defendant waived preliminary examination, or that a preliminary examination was had and the defendant was properly bound over for trial. *In re Elliott*, 315 Mich 662; 24 NW2d 528 (1946); 1 Gillespie, Michigan Criminal Law Procedure (2d ed), § 59, p 115.

In this case, the court file contains a return from the lower court following a preliminary examination. The charges in the complaint are all felonies. Thus, this Court had subject matter jurisdiction over this case and defendant's request for summary disposition at this time is denied.<sup>1</sup>

Finally, the Court will deny defendant's motion for personal recognizance bond. Following conviction, a defendant is no longer entitled to the presumption of innocence and

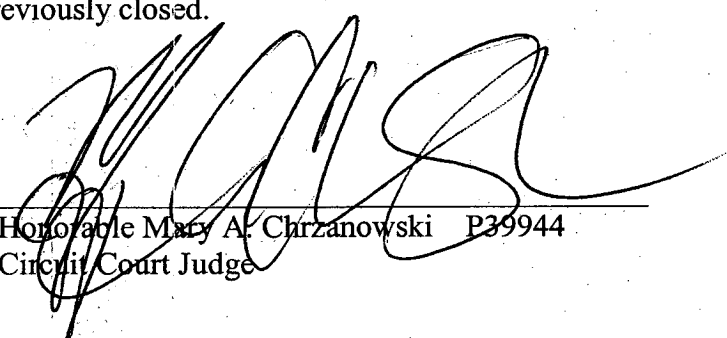
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<sup>1</sup> The Court notes that defendant's arguments appear to be more of a challenge to whether the Court acquired personal jurisdiction over defendant, based on defendant's perception of procedural errors. Based on its review of the files in light of defendant's assertions, the Court is not convinced any error occurred which would warrant further inquiry. Even if this Court believed such errors occurred in defendant's case, the issue was not raised timely and is waived. See MCR 2.116(C)(1) and (D)(1).

release on bail or bond becomes a matter of discretion not of right. MCL 765.6(1); MCL 770.9. *People v Tate*, 134 Mich App 682, 693; 352 NW2d 297 (1984). In this case, the Court has not been presented with any reason to exercise its discretion and further consider the release of defendant.

Therefore, for the reasons set forth above, defendant's motion for relief from judgment is DENIED WITHOUT PREJUDICE; defendant's motion for summary disposition is DENIED, and defendant's motion for personal recognizance bond is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this case was previously closed.

IT IS SO ORDERED.

  
Honorable Mary A. Chrzanowski P39944  
Circuit Court Judge

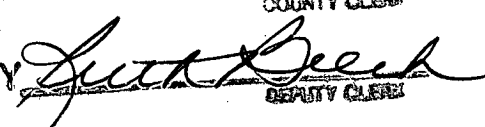
Dated: JUL 26 2006

CC: Eric Smith  
Macomb County Prosecutor

Agustin T. Pena #224587  
C/O Saginaw Regional Correctional Fac.  
9625 Pierce Road  
Freeland, MI 48623

A TRUE COPY

Carmen Gabaugh  
COUNTY CLERK

BY   
DEPUTY CLERK